

CANADA / JUDGMENT

Slater Vecchio LLP v. Arvanitis

2022 BCCA 253

COURT

British Columbia Court of Appeal

DECIDED

30 June 2022

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2022 BCCA 253 Slater Vecchio LLP v. Arvanitis

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Slater Vecchio LLP v. Arvanitis,

2022 BCCA 253

Date: 20220630

Dockets: CA48269; CA48270

Between:

Slater Vecchio LLP

Respondent

(Plaintiff)

And

Vicky Arvanitis

Appellant

(Defendant)

Before:

The Honourable Justice Griffin

(In Chambers)

On appeal from: Orders of the Supreme Court of British Columbia, dated

August 15, 2019 and November 21, 2019 (Slater Vecchio LLP v. Arvanitis, 2019 BCSC 2370, Vancouver Docket S195495).

Oral Reasons for Judgment

The Appellant, appearing in person:

V. Arvanitis

Counsel for the Respondent:

D. Georgetti

Place and Date of Hearing:

Vancouver, British Columbia

June 30, 2022

Place and Date of Judgment:

Vancouver, British Columbia

June 30, 2022

Summary:

Application for an extension of time to appeal a vexatious litigant order made in August 2019 and expanded in November 2019. Held: the application in respect of the August 2019 is quashed, as a previous application for an extension of time was already dismissed; the second application for an extension of time is dismissed. In light of the criteria in *Davies v. C.I.B.C.*, it is not in the interests of justice to grant an extension of time.

- [1] GRIFFIN J.A.: The applicant, Vicky Arvanitis, seeks an extension of time to appeal a vexatious litigant order made against her by Justice Sharma in the Supreme Court, and also seeks an order that no fees are payable on the appeal.
- [2] As a preliminary matter, I note that Ms. Arvanitis has filed two notices of application for leave to appeal in this matter. The first is in relation to an appeal from Sharma J.'s order of August 15, 2019. The second is in relation to an appeal from Sharma J.'s order of November 21, 2019.
- [3] Ms. Arvanitis has previously appealed Sharma J.'s August 2019 order. That appeal was dismissed in this Court when Justice Dickson dismissed an application for an extension of time to appeal on October 29, 2019 (indexed as 2019 BCCA 481). Accordingly, Ms. Arvanitis' second attempt to appeal from Sharma J.'s August 2019 order must be quashed as a nullity.
- [4] I will now turn to Ms. Arvanitis' application for an extension of time to appeal the November 21, 2019 order.

Background

- [5] The proceedings involve litigation that has been ongoing for many years. I will briefly summarize the background without intending to be complete.
- [6] Ms. Arvanitis was involved in two motor vehicle accidents in 2001 and 2004. She was represented in her personal injury claim by the law firm Slater Vecchio. There was disagreement between Slater Vecchio and Ms. Arvanitis regarding outstanding legal fees. Ms. Arvanitis sued the firm in negligence. Her action was dismissed in 2016 (trial reasons indexed as 2016 BCSC 1612).
- [7] Starting in late 2016, Mrs. Arvanitis began posting negative comments about Slater Vecchio on various public websites, including posting on the personal accounts of Slater Vecchio employees and on the account or accounts of children of a partner at the firm, and in a way that reached the attention of current and former clients of Slater Vecchio.
- [8] On May 10, 2019, Slater Vecchio commenced an action for defamation against Ms. Arvanitis. She filed a response and a counterclaim.
- [9] Slater Vecchio sought an order to dismiss the counterclaim pursuant to R. 9-5 of the Supreme Court Civil Rules, an order for summary judgment pursuant to R. 9-6, and an order that Ms. Arvanitis be declared a vexatious litigant pursuant to s. 18 of the Supreme Court Act, R.S.B.C. 1996, c. 443.
- [10] The parties appeared before Sharma J. on August 15, 2019 (indexed as 2019 BCSC 2369). Justice Sharma dismissed the counterclaim pursuant to R. 9-5, finding it had no chance of success because the issues raised were clearly *res judicata* and had already been decided at the negligence trial. Justice Sharma granted summary judgment in favour of Slater Vecchio pursuant to R. 9-6. Justice Sharma also found Ms. Arvanitis to be a vexatious litigant. She tailored the order to prohibit Ms. Arvanitis from starting any proceedings against Slater Vecchio, its partners or employees, without leave of the court.
- [11] At the same time, Slater Vecchio had sought to have the vexatious litigant order broadened to prohibit Ms. Arvanitis from commencing proceedings against Mr. Georgetti--who was counsel for Slater Vecchio in the litigation--his law firm, and the partners and employees of his law firm. Justice Sharma noted, based on the record before her, that there were "very concerning and disturbing indications from [Ms. Arvanitis] in her emails, that she is going to try and pursue [Mr. Georgetti and members of his law firm] for their representation of [Slater Vecchio]" (at para. 51). Justice Sharma was "very concerned by" those indications, because of the "escalation" she has seen of Ms. Arvanitis' campaign against Slater Vecchio, and she understood the grounds upon which Mr. Georgetti was seeking the protection of a further vexatious litigant order (at para. 52).

- [12] However, Sharma J. ultimately decided to "give [Ms. Arvanitis] one chance to prove everybody wrong" (at para. 53). Justice Sharma adjourned the application, but granted Mr. Georgetti permission to come back on an expedited basis to seek the expanded vexatious litigant order, should there be evidence to justify such an order (at para. 54).
- [13] As mentioned, Ms. Arvanitis appealed Sharma J.'s August 15, 2019 order (as well as two orders from other judges). However, she required an extension of time to appeal, and that application was dismissed.
- [14] On November 21, 2019, the parties appeared again before Sharma J. (indexed as 2019 BCSC 2370). Mr. Georgetti, on behalf of his law firm, sought to expand the vexatious litigant order, seeking that it prohibit Ms. Arvanitis from instituting proceedings in any court against him or the partners or employees of his law firm without leave.
- [15] In support of his application, Mr. Georgetti provided evidence of communications Ms. Arvanitis had with him and others that "raise[d] the spectre of litigation" (at para. 7). Justice Sharma expressed particular concern over the fact that Ms. Arvanitis had been pursuing harassment and abuse allegations against Mr. Georgetti (at para. 7). The record before Sharma J. contained emails from Ms. Arvanitis to Mr. Georgetti, in which she suggested she intended to sue Mr. Georgetti for defamation, and information that Ms. Arvanitis had reported Mr. Georgetti to the RCMP for criminal harassment in relation to Mr. Georgetti's conduct in representing Slater Vecchio in these proceedings.
- [16] Justice Sharma granted an order to prohibit Ms. Arvanitis from instituting proceedings in any court against Mr. Georgetti or members of his law firm without leave of the court.
- [17] Between 2019 and 2022, the parties appeared both in the Supreme Court and in this Court on numerous occasions in relation to Ms. Arvanitis' appeal of a settlement agreement between the parties. That appeal was dismissed as abandoned by Justice Marchand on January 31, 2022.
- [18] On May 4, 2022, Ms. Arvanitis filed a notice of application for leave to appeal from Sharma J.'s November 2019 order. In summary, Ms. Arvanitis says the order should not have been granted, because she has never sued the parties covered by the November 2019 order.
- [19] Ms. Arvanitis has also filed an affidavit in support of her application for a no fee order. She deposes that she is unemployed and on permanent disability and that her expenses exceed her income, and she has only modest assets plus debts.
- [20] The respondent opposes the present application.

Legal Principles

Extension of Time to Bring an Appeal

- [21] The Court of Appeal Act, R.S.B.C. 1996, c. 77, s. 14(1) provides that the time limit for bringing an appeal is 30 days after the order appealed from is pronounced. Section 10(1) provides that a justice may extend the time within which an appeal may be brought.
- [22] The criteria in an application to extend the time to bring an appeal are well established, as set out in *Davies v. C.I.B.C.* (1987), 15 B.C.L.R. (2d) 256 at 259-260 (C.A.):
- 1) Was there a bona fide intention to appeal?
 - 2) When were the respondents informed of the intention?
 - 3) Would the respondents be unduly prejudiced by an extension of time?
 - 4) Is there merit in the appeal?
 - 5) Is it in the interest of justice that an extension be granted?
- [23] The applicant has the burden of establishing that the criteria are met: *Kedia International Inc. v. Royal Bank of Canada*, 2008 BCCA 305 at para. 8 (Chambers); *Rapton v. British Columbia (Motor Vehicles)*, 2011 BCCA 71 at para. 19 (Chambers).
- [24] The overriding question is whether it is in the interests of justice to grant the extension: *Davies* at 260; *First Majestic Silver Corp. v. Santos*, 2014 BCCA 214 at para. 57, leave to appeal to SCC refused, 35962 (27 November 2014).

No Fee Order

- [25] A no fee order is available where an applicant shows they cannot afford to pay mandatory appeal fees without undue hardship: Court of Appeal Rules, R. 56(1). Under R. 56(2), the order may be denied if the appeal lacks merit, is scandalous, frivolous or vexatious, or otherwise constitutes an abuse of the Court's process.

Analysis

- [26] Generally, applicants who do not demonstrate an intention to bring an appeal in a timely manner are not entitled to an extension of time: *Terrapin Mortgage Investment Corp. v. Ruby Lake Country Developments Ltd.*, 2011 BCCA 4 at para. 22 (Chambers); *Green v. FSC Financial Services Centre Ltd.* (1994), 96 B.C.L.R. (2d) 73 at para. 20, 1994 CanLII 594 (C.A.).
- [27] Ms. Arvanitis is over 30 months past the deadline to bring her appeal. She has not provided any evidence that she formed a bona fide intention to appeal the November 21, 2019 order within the timeline to do so, or that she notified the respondents of any intention to specifically appeal this order. Rather, the bulk of her submissions before me were directed to the merits of her appeal. She emphasizes the injustice of the order of Sharma J., says that she was treated unfairly in the hearing, and she emphasizes the prejudice she now suffers in the justice system because of being labelled as a vexatious litigant.

- [28] While this Court has granted an extension of time following a lengthy delay in rare cases, those cases typically involve good reason for the delay and prejudice to the respondents that can be easily remedied.
- [29] Ms. Arvanitis submits that the reason for the delay is that she is disabled, self-represented and has suffered from extreme stress due to the underlying dispute she has with Slater Vecchio. While I of course have sympathy for anyone suffering stress and health problems, I note that many litigants face these problems and nevertheless meet the time periods. I also appreciate the significance of the order that she seeks to appeal. However, I am not persuaded that she has established good reason for the inordinate delay in this case.
- [30] I do not see it as necessary to consider the merits in detail because of the lengthy delay in this case. In light of the Davies criteria and the extensive delay in bringing the appeal, I conclude that it is not in the interests of justice to grant an extension of time.
- [31] I therefore dismiss the application for an extension of time to appeal.
- [32] In light of the dismissal, it is unnecessary for me to deal with the application to waive fees.
- [33] The respondent seeks fixed costs of today's hearing, of \$500 for each matter, for a total of \$1,000. However, the respondent gave no notice to Ms. Arvanitis of this position. The respondent is entitled to costs given the outcome, but I will not order them in a fixed amount due to the lack of notice.
- [34] For convenience and because she is self-represented, I dispense with Ms. Arvanitis' signature on the form of order, but on the basis that counsel for the respondent must provide the form of order for Ms. Arvanitis' review 10 days prior to filing it with the Registry, and when filing it with the Registry, must provide any correspondence from Ms. Arvanitis objecting to the form of order, and the position of the respondent as to the same, copied to Ms. Arvanitis.

[Discussion with parties re: seeking further clarification]

"The Honourable Justice Griffin"

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Prepared on 29 October 2026 · Esheria